OHIO CIVIL SERVICE LEGISLATION IN 1959

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In its 1959 regular session, the 103rd General Assembly of Ohio made the most significant changes in Ohio civil service law that have occurred since the basic provisions were enacted in 1913.

The principal changes were incorporated in Am. Sub. H. B. No. 591 and Am. H. B. No. 794.† The Former revises the statutory classification and pay plan for positions in the Ohio civil service. The latter provides for establishment of a state personnel department to replace the existing civil service commission.

Two facts are especially important in any review of the new legislation:

(1) These enactments make no significant changes in the legal rights of public employees with respect to their positions, or of the employing agencies with respect to their individual employees, and

(2) Both enactments reflect a purpose of the legislature to make state personnel management a positive service program, in addition to its traditional usefulness as a partial safeguard against excessive turnover of employees for political purposes.

The legislation grew out of a study made by the Ohio Legislative Service Commission pursuant to H. J. R. No. 52 of the 102nd General Assembly. That resolution requested the commission, in part:

> to analyze the laws and administrative practices governing personnel management relative to all personnel of the state of Ohio, both within and outside of the classified service; to ascertain the statutory and administrative improvements which are needed; and to report its findings to the 103rd General Assembly.

On July 11, 1957, the commission directed its staff to proceed with the study, and appointed a legislative study committee to oversee the project. The study committee was divided into two subcommittees for purposes of hearings and research: one to study classification and pay problems, the other to study problems in state personnel management. The study got under way in January, 1958, and the research reports were submitted to the 103rd General Assembly in January, 1959. Although neither the study committee nor the research staff recommended specific legislative bills, the two enactments—both of which had bipartisan sponsorship—reflected the principal conclusions of the research reports.

CLASSIFICATION AND PAY

When the study committee and the staff began examination of the

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†The following abbreviations are used in this article: Amended House Bill, Am. H. B.; Amended Substitute House Bill, Am. Sub. H. B.; House Joint Resolution, H.J.R.

classification and pay law early in 1958, several unique characteristics of the Ohio system had to be taken into consideration.

In Ohio, virtually all classes and their respective pay levels are listed in the statutory law, by a legislature which holds regular sessions once each two years. In most other civil service systems, the classes and their pay levels are adopted, modified, or abolished by administrative promulgations, pursuant to general authority granted in the law. On the face of it, this appeared to cause a much greater rigidity in the Ohio system than exists in most other jurisdictions. Under this existing law, however, the civil service commission had had ample authority to modify classes and pay levels, subject, in each instance, to ratification by the legislature at its next regular session. The classification and pay plan had for many years been comparatively rigid, chiefly because this interim administrative power had not been freely used—even though it was quite unusual for the legislature to disallow interim changes.

Another special characteristic of the Ohio system was the comparatively great number of classes—more than 900—set forth in the statutory plan. The custom of avoiding extensive interim changes had meant that little-used classes had not been continuously weeded out. Sometimes a class had been created to accommodate a single position. It had not been uncommon to relieve a salary problem by adding a new class above the salary level of a series of existing related classes, while the lowest-paid class of the series fell into disuse but remained in the law.

Since the classification and pay plan was statutory, rather than administrative, and since it contained a long and detailed series of class titles, the emphasis and method of the survey ware different from those employed in most other classification and pay surveys.

Typically, such a survey is conducted by consultants employed by an administrative agency—most commonly the central civil service agency. The principal result of such a typical survey is a detailed allocation list assigning or reassigning every position to the appropriate class.

In the Ohio study, legislative research personnel, working under legislative surveillance, concentrated mainly on the classes and class pay levels themselves. The principal result of this study was not a detailed assignment or reassignment of every position to the proper class; rather it was a revised list of statutory classes, with revised salary levels as needed. The legislature, in its study and its enactments, did not and cannot directly change the classifications of individual positions or persons; this must be done by administrative personnel within the new framework of classes set down by the legislature.

In order to assist administrative personnel in their interpretation and use of the new classification plan, the legislative research staff did assemble data on each state position and its incumbent, and did suggest a proper classification for each. But these suggested assignments of positions have no legal status and will not necessarily be adopted; they are advisory

only, and the decision with respect to every position is vested in the new state department of personnel, subject to possible review by the new state personnel board of review.

Several basic policy assumptions were adopted by the study committee and the research staff during the study. Ultimately these same policies were concurred in by the legislature itself, and are reflected in the new legislation. Chief among these policies were the following:

(1) Salary adjustments should not be made on a basis of policy judgment that certain classes, or groups of classes, should be given pay increases of a particular percentage or dollar amount, "across the board." Instead, the salary level of each class should be determined chiefly on a basis of two factors: (a) the competitive market pay level for similar employment, and (b) comparison of the level of responsibility in the particular class with the level of responsibility in other classes in the state service.

(2) The study and the legislation should not force reductions in pay for classes of public personnel. It was agreed that, even though an existing class might be found to be paid above the current competitive market level for the kind of employment involved, the class as a whole should not be reduced in pay. The chief reason for this policy is the presumption that the state had a moral obligation to observe the terms of the implied agreements by which personnel were recruited into the class. This policy does not, however, prohibit the department of personnel and the employing agencies from reclassifying an individual employee downward, if it is found that such an employee is classified at too high a level for the duties he performs; such an action would be a correction of an error whereby an individual employee has been paid above the level of equal pay for equal work alongside his colleagues in the state service.

(3) Where the current competitive market pay level for a given class of positions falls between two of the statutory pay ranges, the class ordinarily should be assigned to the next higher, rather than the next lower, pay range.

(4) It is desirable to reduce the total number of statutory classes, and to broaden the class specifications correspondingly, in order that the whole structure might be less rigid than in the past. It is especially desirable to eliminate the one-man classes (which sometimes had been created to solve individual salary problems); and to eliminate obsolescent "I" classes (at the bottom levels of various series) which had fallen into disuse because of low starting pay levels.

(5) The recommended salary level for an individual class should not be affected by the dollar cost of placing that class at the current competitive market pay level for similar employment. If the proposed new classification and pay plan as a whole should prove to be too costly, it should be revised downward without damaging salary relationships between classes, insofar as this is possible.

These policies were effectively implemented by the classification and pay legislation. In the course of study and debate of the bill, however, it was frequently pointed out that the obsolescence and the inequities which grew into the plan in past years also can grow into the plan in future years. It is important to note that the interim administrative power to revise the plan was not disturbed; and that the personnel agency now has been directed by law to continue this research on classification and salaries. (See discussion below of Am. H. B. No. 794.) Given adequate budget and staff, the central personnel agency can perform in any year the kind of survey work which occurred in 1958, but much more easily and less expensively if the classification and pay plan is studied and revised every year.

State Personnel Management

For many years the principal state agency for personnel administration had been the state civil service commission. The statutory organizational pattern of this agency was highly unconventional in that it consisted of a two-member bipartisan board. There was no formally designated chief administrative officer, and the commission itself performed quasi-legislative functions in the promulgation of rules and regulations; quasi-judicial functions as a tribunal for contested personnel actions; and administrative duties in the employment and supervision of the agency's own personnel. The law prescribing this arrangement had been frequently criticized in previous studies and by state administrators whose operations were affected by the agency.

The principal effect of Am. H. B. No. 794 was to abolish the existing civil service commission and to replace it with a department of state personnel. The department consists of a director of state personnel and a three-member state personnel board of review.

The director is to be appointed by the governor, with the advice and consent of the senate, for a four-year term overlapping the term of the governor (the term of the first appointee ending on the second Monday in February, 1961). The director is to be paid a salary of $14,000 per year, and is required to devote full time to the position.

The board of review is to consist of three members, not more than two of whom may be affiliated with any one political party. Members are to be appointed by the governor with advice and consent of the senate for overlapping terms of six years. Members are required to give full-time service, at salaries of $10,000 per year.

The administrative functions heretofore vested in the civil service commission, with a few relatively minor exceptions, now are vested in the director of state personnel. This is accomplished in two ways.

First, a new section of law (Section 143.013, Revised Code) assigns to the director the examination of applicants; preparation of eligible lists; promulgation and amendment of class specifications; allocation and reallocation of positions among the classes; personnel recruitment services;

research relative to revision of the classification and pay plan; personnel training programs in cooperation with appointing authorities, colleges or universities; appointment of staff for the personnel agency; and maintenance of a journal.

Secondly—in addition to enactment of the new section—the legislation substitutes "director of state personnel" for "civil service commission" in a number of existing sections which were modified and reenacted. Among these sections were 143.03, .04, .06, .07, .08, .13, .14, .16 to .20, inclusive; 143.23 to .25, inclusive; 143.27, .30, .39, .46, .48, and 145.04.

Virtually every official action of the director of personnel which affects a class, position, or employee, is subject to appeal to the state personnel board of review and to its power to affirm, disaffirm, or modify such actions. Again, this is done in two ways.

First, a new section of law (Section 143.012, Revised Code) empowers the board to hear appeals of employees in the classified service from final decisions of appointing authorities or of the director; to hear appeals of appointing authorities from final decisions of the director; and to maintain the necessary staff, rules and regulations, and powers of procuring evidence which relate to these appellate functions.

Secondly—in addition to enactment of the new section—the appellate powers of the board over decisions of the director and of appointing authorities are inserted into existing sections which have been modified or reenacted. Among these sections are 143.07, .13, .27, and .272.

The existing power to promulgate administrative rules and regulations has been divided between the director and the board of review. Those rules and regulations which govern personnel administration and personnel actions are to be prescribed, amended, and enforced by the director, under amended Section 143.07, Revised Code, and other provisions referred to by it; these actions can be approved, disapproved, or modified by the board. Rules and regulations governing appellate proceedings before the board, however, are to be promulgated by the board itself, in accordance with the administrative procedures law (Sections 119.01 to .13, inclusive, Revised Code).

The existing powers of state supervision over municipal civil service have been transferred directly to the state personnel board of review.

It is a truism that the consequences of new law cannot be known until experience under its provisions has been had. This is especially and uniquely true, however, of civil service enactments of the 103rd General Assembly. The legislation does not alter the legal rights and privileges of state employees or positions except in minor or indirect respects. (It does, for example, extend from three to four months the initial probationary period at the end of which a new employee can be removed; and it does bring about or make possible early pay increases for a large number of employees.)

The most significant aspects of the legislation are not those provisions which touch upon employees or their employing agencies directly, but rather are those which revise the statutory-administrative machinery for personnel management. These provisions attempt—without absolute guarantee of success—to call upon the personnel mechanism to be more active than in the past.

They attempt to avoid future stalemates by abolishing a two-member board and by creating a three-member board. They call for staff services in addition to regulatory activity—research, recruitment, and personnel training work, for example. They call for a more vigorous administrative situation in the agency itself, if it can be supposed that this is more likely under management of a director than under management of a board.

All of these, however, are aims in the way of administrative improvement which never can be guaranteed by statutory law. Stalemates, lack of staff service, and lack of administrative vigor could exist under either the old provisions or the new. The most significant difference resulting from the new legislation is the new opportunity to place personnel administration under a director. This was done on the assumption that more and better service in the personnel field could be rendered under single management; and on the corresponding assumption that the greater flexibility and energy inherent in single management will be used for the full restoration and advancement of the merit principle.